

EXHIBIT 11

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF WASHINGTON AT SEATTLE

3
4 MICROSOFT CORPORATION,)
5 Plaintiff,) C10-01823-JLR
6 v.) SEATTLE, WASHINGTON
7 MOTOROLA INC., et al,) November 14, 2012
8 Defendant.) TRIAL DAY 2
9)

10 VERBATIM REPORT OF PROCEEDINGS
11 BEFORE THE HONORABLE JAMES L. ROBERT
12 UNITED STATES DISTRICT JUDGE

13 APPEARANCES:

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16 For the Plaintiff: Arthur Harrigan, Christopher
17 Wion, David Pritikin, Rick
18 Cederoth, Ellen Robbins and Andy
Culbert

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20 For the Defendants: Jesse Jenner, Ralph Palumbo,
21 Philip McCune, Kevin Post, Tom
22 Miller and Mark Rowland
23
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1 802.11 essential patents?

2 A Yes.

3 Q Have you been personally involved in those discussions?

4 A Yes.

5 Q Could you turn to Exhibit 1608 in your binder.

6 A (Witness complies.) Yes.

7 Q Can you tell us what this letter is?

8 A This is a letter that we drafted to Motorola requesting
9 that they provide us with their --

10 MR. HARRIGAN: I'm sorry, Your Honor. We don't have
11 a binder.

12 A This is a letter we drafted to Motorola requesting they
13 provide us their RAND license.

14 Q I'm sorry, let's -- can you tell us again?

15 A Yes. We drafted this letter to Motorola, requesting that
16 they provide us with their RAND license.

17 MR. PRITIKIN: Microsoft moves the admission of
18 Exhibit 1608.

19 MR. PALUMBO: No objection, Your Honor.

20 THE COURT: Admitted.

21 (Exhibit No. 1608 was admitted into evidence.)

22 Q The letter is signed by whom?

23 A This was signed by Jinping Yang, who reports to me.

24 Q Who drafted this letter?

25 A I drafted it.

1 Q What is it that prompted you to send this request to
2 Motorola?

3 A Microsoft made a request to us that we request a license
4 on RAND terms from Motorola.

5 Q And was that pursuant to an indemnification arrangement?

6 A Yes.

7 Q And how would a license for Marvell's WiFi chips have
8 benefited Microsoft?

9 A Well, we would have ideally obtained a license that would
10 have exhausted any further claims that would have been made
11 by Motorola against our customers.

12 Q In the first paragraph the letter mentions a March 1994
13 intellectual property statement on the Motorola proposals in
14 the IEEE 802.11 standards body. Do you understand that to be
15 a letter of assurance?

16 A Yes.

17 Q What did you understand Motorola had committed to do based
18 on this letter of assurance?

19 A I understood that Motorola had committed to license their
20 standard essential patents on fair, reasonable, and
21 non-discriminatory terms.

22 Q After this letter was sent, did you have some e-mails back
23 and forth with anyone at Motorola?

24 A I did.

25 Q With Mr. Kowolski?

1 A Yes.

2 Q Did you tell Motorola why you wanted the license?

3 A Yes.

4 Q What did you tell them?

5 A That it was our intent to get a license that would protect
6 our customer, Microsoft.

7 Q Did Motorola eventually make a license offer to Marvell?

8 A They did.

9 Q Could you turn to Exhibit 16 in your binder?

10 And there is an e-mail and a draft license agreement.
11 Can you explain what this is?

12 A This e-mail and draft license agreement is what
13 Mr. Kowolski sent to me.

14 Q When did he send it to you?

15 A Friday, November 25, 2011.

16 MR. PRITIKIN: Microsoft moves the admission of
17 Exhibit 16, Your Honor.

18 MR. PALUMBO: No objection, Your Honor.

19 THE COURT: 16 is admitted.

20 (Exhibit No. 16 was admitted into evidence.)

21 Q I want to ask you about some of the provisions of this
22 proposed draft license agreement you got back from Motorola.
23 As you understand it, did it license -- did the agreement
24 actually include a license for Marvell's chips?

25 A No.

1 Q What did you understand that it would cover?

2 A As I read this agreement, it would cover products that use
3 our chips. But it is not a license to our chips.

4 Q You said you asked for a license to cover the product you
5 sold to Microsoft?

6 A Yes.

7 Q Were any of your customers specifically excluded from this
8 agreement?

9 A Yes. There's a section in the back called "repudiating
10 parties". And those specific parties are excluded from this
11 agreement. And that includes Microsoft and Apple.

12 Q Now, what was your reaction to that?

13 A Well, it was entirely contrary to what we had asked for.
14 We had asked for a license that would enable us to protect
15 our customers, specifically Microsoft in this case.

16 Q Did you consider a license that applied to products that
17 were sold to some of your customers, but excluded others, to
18 be discriminatory?

19 A Yes. I would consider that discriminatory.

20 Q Let's talk about the financial terms of the license offer.
21 What was the royalty rate that Motorola requested that
22 Marvell pay?

23 A The royalty rate was 2.25 percent of the net selling price
24 of the end-user product.

25 Q And did this change based on different end uses of your

1 customer's products?

2 A Well, the percentage, I assume, would not change. But you
3 would apply it against different net selling prices, so the
4 amount effectively would change.

5 Q Let's see how that would work. So if the net selling
6 price of a gaming system, like an Xbox or a Sony PlayStation,
7 including one of the Marvell 802.11 chips, is \$200, as you
8 understand it, the royalty demanded by Motorola would have
9 been \$4.50?

10 A Yes.

11 Q How does that compare to the price of the WiFi chips that
12 Marvell sells?

13 A That royalty is slightly higher than the cost of the chip
14 itself.

15 Q Now, let's see how it would apply in the future if Marvell
16 sold a WiFi chip to a computer manufacturer. Assume with me
17 that a laptop has a net selling price of \$1,000, would the
18 royalty under this proposed license be \$22.50?

19 A Yes.

20 Q And how does that compare to the price that Marvell
21 charges for the WiFi chips?

22 A Well, that's several times the price of our chip.

23 Q Now, you told us earlier that Marvell sells WiFi chips to
24 Audi for use in its A-8?

25 A That's right.